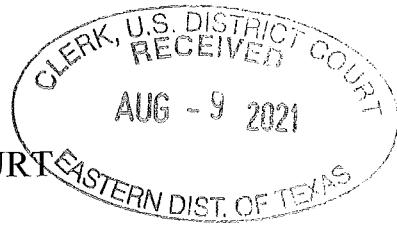


PETITION FOR WRIT OF HABEAS CORPUS: 28 USC §2254 (Rev. 9/10)
ADOPTED BY ALL FEDERAL COURTS IN TEXAS



IN THE UNITED STATES DISTRICT COURT

FOR THE Eastern DISTRICT OF TEXASTyler DIVISIONPETITION FOR A WRIT OF HABEAS CORPUS BY
A PERSON IN STATE CUSTODY

James Russell Clymer Jr.
PETITIONER
(Full name of Petitioner)

Mark W. Michaels Unit
CURRENT PLACE OF CONFINEMENT

vs.

02259455

PRISONER ID NUMBER

Townson
RESPONDENT
(Name of TDCJ Director, Warden, Jailor, or
authorized person having custody of Petitioner)

6:21CV307 JDK/JDL

CASE NUMBER

(Supplied by the District Court Clerk)

INSTRUCTIONS - READ CAREFULLY

1. The petition must be legibly handwritten or typewritten and signed and dated by the petitioner, under penalty of perjury. Any false statement of an important fact may lead to prosecution for perjury. Answer all questions in the proper space on the form.
2. Additional pages are not allowed except in answer to questions 11 and 20. Do not cite legal authorities. Any additional arguments or facts you want to present must be in a separate memorandum. The petition, including attachments, may not exceed 20 pages.
3. Receipt of the \$5.00 filing fee or a grant of permission to proceed *in forma pauperis* must occur before the court will consider your petition.
4. If you do not have the necessary filing fee, you may ask permission to proceed *in forma pauperis*. To proceed *in forma pauperis*, (1) you must sign the declaration provided with this petition to show that you cannot prepay the fees and costs, and (2) if you are confined in TDCJ-CID, you must send in a certified *In Forma Pauperis* Data Sheet form from the institution in which you are confined. If you are in an institution other than TDCJ-CID, you must send in a certificate completed by an authorized officer at your institution certifying the amount of money you have on deposit at that institution. If you have access or have had access to enough funds to pay the filing fee, then you must pay the filing fee.

5. Only judgments entered by one court may be challenged in a single petition. A separate petition must be filed to challenge a judgment entered by a different state court.
6. Include all of your grounds for relief and all of the facts that support each ground for relief in this petition.
7. Mail the completed petition and one copy to the U. S. District Clerk. The "Venue List" in your unit law library lists all of the federal courts in Texas, their divisions, and the addresses for the clerk's offices. The proper court will be the federal court in the division and district in which you were convicted (for example, a Dallas County conviction is in the Northern District of Texas, Dallas Division) or where you are now in custody (for example, the Huntsville units are in the Southern District of Texas, Houston Division).
8. Failure to notify the court of your change of address could result in the dismissal of your case.

PETITION

What are you challenging? (Check all that apply)

A judgment of conviction or sentence, probation or deferred-adjudication probation. (Answer Questions 1-4, 5-12 & 20-25)

A parole revocation proceeding. (Answer Questions 1-4, 13-14 & 20-25)

A disciplinary proceeding. (Answer Questions 1-4, 15-19 & 20-25)

Other: _____ (Answer Questions 1-4, 10-11 & 20-25)

All petitioners must answer questions 1-4:

Note: In answering questions 1-4, you must give information about the conviction for the sentence you are presently serving, even if you are challenging a prison disciplinary action. (Note: If you are challenging a prison disciplinary action, do not answer questions 1-4 with information about the disciplinary case. Answer these questions about the conviction for the sentence you are presently serving.) Failure to follow this instruction may result in a delay in processing your case.

1. Name and location of the court (district and county) that entered the judgment of conviction and sentence that you are presently serving or that is under attack: _____

75th Liberty County

2. Date of judgment of conviction: 17 April 2019

3. Length of sentence: 60 years

4. Identify the docket numbers (if known) and all crimes of which you were convicted that you wish to challenge in this habeas action: _____

A66 Sexual Assault Child 22.021 (a)(2)(b)

Judgment of Conviction or Sentence, Probation or Deferred-Adjucation Probation:

5. What was your plea? (Check one) Not Guilty Guilty Nolo Contendere

6. Kind of trial: (Check one) Jury Judge Only

7. Did you testify at trial? Yes No

8. Did you appeal the judgment of conviction? Yes No

9. If you did appeal, in what appellate court did you file your direct appeal? 9th Court

of Appeals Cause Number (if known): 09-19-001486R

What was the result of your direct appeal (affirmed, modified or reversed)? Affirmed as Modified

What was the date of that decision? October 30th 2019

If you filed a petition for discretionary review after the decision of the court of appeals, answer the following:

Grounds raised: _____

Result: _____

Date of result: _____ Cause Number (if known): _____

If you filed a petition for a *writ of certiorari* with the United States Supreme Court, answer the following:

Result: _____

Date of result: _____

10. Other than a direct appeal, have you filed any petitions, applications or motions from this judgment in any court, state or federal? This includes any state applications for a writ of habeas corpus that you may have filed. Yes No

11. If your answer to 10 is "Yes," give the following information:

Name of court: 75th Liberty County

Nature of proceeding: Appeal 11.07

Cause number (if known): CR 34236-A

Date (month, day and year) you filed the petition, application or motion as shown by a file-stamped date from the particular court: 24 April 2020

Grounds raised: Ineffective Assistants of Counsel

Date of final decision: 25 November 2020

What was the decision? Denied without written order

Name of court that issued the final decision: Court of Criminal Appeals of Texas

As to any second petition, application or motion, give the same information:

Name of court: 75th Liberty County

Nature of proceeding: Appeal Subsua*cit* 11.07

Cause number (if known): CR 34236-C

Date (month, day and year) you filed the petition, application or motion as shown by a file-stamped date from the particular court:

April 21, 2021

Grounds raised: Ineffective Assistants of counsel, Mis conduct of trial Judge, Judge Morefield didn't completely recuse himself, trial court failed to answer summary of judgement.

Date of final decision: 2 June 2021

What was the decision? Dismissed without written order this subsequent application for a writ of habeas corpus

Name of court that issued the final decision: Court of Criminal Appeals of Texas

If you have filed more than two petitions, applications or motions, please attach an additional sheet of paper and give the same information about each petition, application or motion.

12. Do you have any future sentence to serve after you finish serving the sentence you are attacking in this petition? Yes No

(a) If your answer is "Yes," give the name and location of the court that imposed the sentence to be served in the future: _____

(b) Give the date and length of the sentence to be served in the future: _____

(c) Have you filed, or do you intend to file, any petition attacking the judgment for the sentence you must serve in the future? Yes No

Parole Revocation:

13. Date and location of your parole revocation: _____

14. Have you filed any petitions, applications or motions in any state or federal court challenging your parole revocation? Yes No

If your answer is "Yes," complete Question 11 above regarding your parole revocation.

Disciplinary Proceedings:

15. For your original conviction, was there a finding that you used or exhibited a deadly weapon?
 Yes No

16. Are you eligible for release on mandatory supervision? Yes No

17. Name and location of the TDCJ Unit where you were found guilty of the disciplinary violation:

Disciplinary case number: _____

What was the nature of the disciplinary charge against you? _____

18. Date you were found guilty of the disciplinary violation: _____

Did you lose previously earned good-time days? Yes No

If your answer is "Yes," provide the exact number of previously earned good-time days that were forfeited by the disciplinary hearing officer as a result of your disciplinary hearing:

Identify all other punishment imposed, including the length of any punishment, if applicable, and any changes in custody status:

19. Did you appeal the finding of guilty through the prison or TDCJ grievance procedure?
 Yes No

If your answer to Question 19 is "Yes," answer the following:

Step 1 Result: _____

Date of Result: _____

Step 2 Result: _____

Date of Result: _____

All petitioners must answer the remaining questions:

20. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting them.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

A. **GROUND ONE:** Counsel failed to hire a Psychiatrist to examine Clymer for mental defectiveness, denying Clymer substantial argument on defenses to Continuous Sexual assault of a minor child
Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
The record does not reflect that counsel hired a psychiatrist to perform a mental evaluation on Clymer. Clymer made counsel aware of his Bi-Polar illness. Clymer is medically diagnosed by a licensed psychiatrist. Clymer was first diagnosed around 1992 and has been admitted to 5 different mental hospitals.

B. **GROUND TWO:** Counsel failed to investigate the claim and challenge the States findings and theories
Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
Counsel failed to do his own independent investigation into the claims against Clymer. When Clymer asked to see all the States evidence against him, Counsel told Clymer that it could not be done, even though Counsel claimed to have done his own investigation.

C. **GROUND THREE:** Counsel advised Clymer that an open plea was his best and only option.

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

When Counsel realized that Clymer couldn't finish paying, he stopped working for Clymer and started telling him that he was going to prison for the rest of his life and that a plea deal was the best and only option. Counsel failed to tell Clymer that he could ask the judge to allow him to receive himself to Clymer could have effective counsel to represent him.

D. **GROUND FOUR:** _____

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

21. Relief sought in this petition: Mr. Clymer is requesting a new trial, Mental evaluation and competency test, fitting of due process with effective counsel and appointed experts to assist in his defense where he may also testify.

Date of Result: _____

Step 2 Result: _____

Date of Result: _____

All petitioners must answer the remaining questions:

20. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting them.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

A. **GROUND ONE:** Trial counsel failed to properly investigate applicants case
newly discovered evidence

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Trial counsel failed to investigate CPS claim that victim gave four different stories.
Trial counsel failed to argue that trial courts did not have a proper arrest warrant. Trial counsel denied applicant of his 4th Amendment on Dec 10 2018 when trial counsel told applicant he was going to prison for the rest of his life

B. **GROUND TWO:** Newly discovered evidence. Misconduct of Judge.

Judge is Applicants 3rd or 4th cousin who signed all documents

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Judge Cain is Applicants 3rd or 4th cousin. Judge Cain signed all documents to have applicant arrested and false imprisoned. Detectives state they had an arrest warrant but one can not be produced by the Sheriffs Office or the courts.

C. **GROUND THREE:** Newly discovered evidence. Judge Morefield recused himself from trial but came back on applicants direct appeal.

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Judge Morefield recused himself from applicants trial due to personal knowledge of applicants family. Judge Morefield then came back and signed his name to applicants direct appeal and his 1107. Judge Morefield failed to completely recuse himself from applicants case.

D. **GROUND FOUR:** Newly discovered evidence. Trial court failed to answer Motion for Summary of Judgement.

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Applicant filed a motion for Summary of Judgements Brief with Exhibits and Affidavit with truth and facts. Trial court refused to see the facts and also refused to answer the summary of judgement filed on 1-15-2021.

21. Relief sought in this petition: _____

22. Have you previously filed a federal habeas petition attacking the same conviction, parole revocation or disciplinary proceeding that you are attacking in this petition? Yes No
 If your answer is "Yes," give the date on which each petition was filed and the federal court in which it was filed. Also state whether the petition was (a) dismissed without prejudice, (b) dismissed with prejudice, or (c) denied.

If you previously filed a federal petition attacking the same conviction and such petition was denied or dismissed with prejudice, did you receive permission from the Fifth Circuit to file a second petition, as required by 28 U.S.C. § 2244(b)(3) and (4)? Yes No

23. Are any of the grounds listed in question 20 above presented for the first time in this petition?
 Yes No

If your answer is "Yes," state briefly what grounds are presented for the first time and give your reasons for not presenting them to any other court, either state or federal.

24. Do you have any petition or appeal now pending (filed and not yet decided) in any court, either state or federal, for the judgment you are challenging? Yes No

If "Yes," identify each type of proceeding that is pending (i.e., direct appeal, art. 11.07 application, or federal habeas petition), the court in which each proceeding is pending, and the date each proceeding was filed.

25. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

- (a) At preliminary hearing: Tom Abbate
- (b) At arraignment and plea: Tom Abbate
- (c) At trial: Tom Abbate
- (d) At sentencing: Tom Abbate
- (e) On appeal: Steven Greene
- (f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

Timeliness of Petition:

26. If your judgment of conviction, parole revocation or disciplinary proceeding became final over one year ago, you must explain why the one-year statute of limitations contained in 28 U.S.C. § 2244(d) does not bar your petition.¹

¹ The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), as contained in 28 U.S.C. § 2244(d), provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of:
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

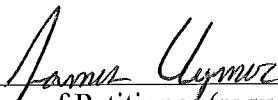
Wherefore, petitioner prays that the Court grant him the relief to which he may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for a Writ of Habeas Corpus was placed in the prison mailing system on

August 1, 2021 (month, day, year).

Executed (signed) on August 1, 2021 (date).



Signature of Petitioner (required)

Petitioner's current address: 2664 FM 2054

Tenn. Colony, TX 77486